

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4491 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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SUNIL @ SHYANO OMKAR KOLI

Versus

STATE OF GUJARAT

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Appearance:

THROUGH JAIL for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/12/1999

#### ORAL JUDGEMENT

1. The petitioner was detained under PASA by virtue of an order passed by the Commissioner of Police, Surat city, Surat on 8th March 1999 in exercise of powers under sub-section [1] of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act'].

2. The petitioner while under detention made an application addressed to Hon'ble Chief Justice stating

that he has been wrongly detained, he is not able to engage an advocate for putting forward his case and therefore, his letter may be treated as a writ petition and may be granted legal aid.

3. The matter has been registered as a Special Civil Application. As the petitioner was not represented by an advocate, Ms. Pahwa was appointed as an amicus curia.

4. Ms. Pahwa raised a contention that the petitioner's case deserves to be considered on the ground of delay. She submitted that the last offence registered was in relation to an offence dated 7th December 1998, whereas the order came to be passed on 5th March 1999 i.e. after a lapse of about 4 months. She submitted that even if the dates of unregistered offence is considered, the last such offence is alleged to have been committed on 1st February 1999 and the order is dated 8th March 1999. Here also, there is a delay of about one month and a few days. She submitted that the statements were recorded on 2nd and 3rd February 1999 and the same came to be verified on 5th March 1999 and therefore, even if the most lenient view is taken, then also, there is a delay of about 1 month and 3 days. She submitted that the detaining authority has not explained why the order came to be passed after such a lapse when according to the detaining authority, there was a need to detain the petitioner under PASA to immediately prevent him from pursuing his illegal and anti social activities. Therefore, the subjective satisfaction about immediate need is not genuine and therefore, the petition may be allowed.

4. Mr.H.H.Patel, learned AGP appearing for the respondents submitted that there is no much delay which should be considered sufficient to vitiate the detention. He submitted that the Government machinery takes time in processing the file and therefore, the petition may be dismissed.

5. Admittedly, the last registered offence is of 7th December 1998. Even if the unregistered offences are considered, the last such offence is dated 1st February 1999. It is true that the authority came to know about such offence by 3rd February 1999 and therefore, any action that can be expected would be from that date. After the statements were recorded on 3rd February 1999, it came to be verified on 5th March 1999 i.e. after a lapse of about 1 month and 3 days. If there was so much urgency about immediately preventing the petitioner from pursuing his illegal activities, the proposing authority

or the detaining authority ought to have taken action immediately. Waiting for one month for verification itself indicates that the subjective satisfaction arrived at by the detaining authority for need to prevent the petitioner immediately from pursuing his illegal activities and for resorting to detention under PASA therefor, is not genuine. While considering the papers, the detaining authority has not applied its mind to the delay caused by sponsoring authority in sending proposal or to think of second situation, the proposal made was not attended to by the detaining authority promptly. The detaining authority has not filed any affidavit in reply to explain as to why this lapse of one month may not be considered as fatal. In absence of any explanation, the inaction on part of the detaining authority for one month would indicate that the need recorded by the detaining authority for immediately preventing the petitioner from his activities by detaining him under PASA is not genuine and in that view of the matter, the petition deserves to be allowed on this count alone.

6. The petition is therefore allowed. The impugned order of detention passed by the Commissioner of Police, Surat city, Surat on March 08, 1999, in respect of the petitioner Sunil @ Shyano Omkar Koli, is hereby set aside. The petitioner be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

7. Before parting, this Court places on record appreciation of the services rendered by Ms. Pahwa as amicus curia in this matter.

[ A.L.DAVE, J. ]

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